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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 22.367(a)(4)
of the FCC's Rules)

RM No. 9387

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AirTouch Communications, Inc. ("AirTouch") hereby submits its comments in response to the above-referenced *Petition for Rulemaking* filed by Andrew Corporation ("Andrew") on September 18, 1998 ("Petition"). AirTouch is a CMRS provider with interests in cellular, paging, PCS and mobile satellite services, both domestic and international.

INTRODUCTION

AirTouch supports the petition for rulemaking filed by Andrew to modify the Commission's rule, 47 C.F.R. § 22.367(a)(4), which requires that cellular operators use base station antennas that transmit signals solely using vertical polarization. AirTouch agrees with Andrew that the time for modification of the rule has come – cellular operators should be permitted to use base station antennas with any polarization orientation, including non-vertical orientations. As Andrew correctly acknowledges, the technological bases for the prohibition no longer remain. Moreover, modification of the rule will produce numerous benefits for cellular operators as well as the communities in which they operate. Finally, in an increasingly competitive wireless environment, cellular operators must be afforded the

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same flexibility as other wireless operators to select the most cost efficient technologies available.

I. THE TECHNOLOGICAL UNDERPININGS OF THE RULE ARE NO LONGER VALID

When the Commission decided to retain the requirements for vertical polarization in 1994, it offered two grounds for its decision – (1) “operating with crossed polarizations significantly reduces the probability of interference between facilities using the same or adjacent spectrum for different purposes,” and (2) accommodating common antenna designs is cost effective and promotes interoperability.¹ As Andrew amply explained in the Petition, neither ground remains a compelling rationale for continued retention of the rule. As such, modification of the rule is entirely consistent with Congress’ deregulatory and streamlining mandate in the Telecommunications Act of 1996. Specifically, under Section 11 of the Communications Act of 1934, as amended, the Commission is required to conduct a biennial review of regulations that apply to operations or activities of telecommunications service providers and repeal or modify any regulation that it determines to be “no longer necessary in the public interest.”² Although the Petition is not explicitly part of the Commission’s biennial review, the statutory rationale underlying the biennial review process is equally applicable in this instance and provides a strong basis for modifying the rule.³

¹ *Amendment of Part 22 of the Commission’s Rules*, 9 FCC Rcd 6513, 1994 LEXIS 4549, at **14 (1994).

² 47 U.S.C. § 161.

³ Likewise, although the Petition is not styled as a petition for forbearance – the second arm of the Commission’s regulatory reform authority contained in the 1996 Act – modification of the rule would also satisfy the three-part test required by Section 10. Specifically, for the reasons

II. ELIMINATION OF THE RULE WILL PROMOTE SUBSTANTIAL BENEFITS FOR CELLULAR CARRIERS AND THE COMMUNITIES IN WHICH THEY OPERATE

There will be substantial benefits for the public if the rule is modified. These benefits stem from carriers' increased flexibility in selecting the best and most efficient transmitting technology for a particular cell site.

As the Commission is well aware, wireless operators face increasing opposition from local communities as they attempt to locate cell sites that are necessary to expand their coverage areas and/or ensure a high quality of service in densely populated regions. Efforts to minimize the visual impact of new antenna structures increases the ability of sites being approved by local zoning authorities. By allowing cellular operators to employ non-vertical polarization for both transmit *and* receive purposes, they will be able to replace the existing functionality of at least three and as many as four antennas with a single antenna. As a result, antennas that previously required up to 12 feet of antenna structure space per sector, can occupy four feet or less per sector. Because an operator will require far less space on any given antenna structure, the opportunities for antenna structure sharing will increase. This will inure to the benefit of both operators and communities.

The use of cross-polarized antennas for transmit purposes will also generate cost savings for cellular operators. First, operators will be able to purchase a single antenna rather than the three or four required to provide the same functionality under the existing restrictive

discussed *infra*, (1) enforcement of the regulation is not necessary to ensure just, reasonable and non-discriminatory rates, (2) enforcement of the rule is not necessary to protect consumers, and (3) forbearance from applying the rule is consistent with the public interest. 47 U.S.C. § 160.

rule. Second, because these antennas will occupy substantially less space on an antenna structure, cellular operators will be able to decrease their antenna structure leasing costs.

Moreover, in the increasingly competitive wireless marketplace and in light of the Commission's strong commitment to "regulatory parity," it is important that all operators have access to the same cost saving technologies and the flexibility to employ those technologies as each individual operator sees fit. Although cellular operators are permitted to transmit non-vertically in their digital operations,⁴ they are prohibited from such operations when providing analog service. On the other hand, PCS and ESMR operators face no such prohibition. Such disparate treatment is inappropriate, particularly where the bases for the rule in question are no longer relevant. Continued enforcement of the rule clearly disadvantages cellular operators.

As increasing capacity continues to place demands on AirTouch's network, AirTouch's engineers are currently examining the means to meet that demand. To this end, AirTouch's engineers are ready to build new and modify existing cell sites to employ slant 45 degree antennas using non-vertical transmit polarization *immediately*. The need for revision of the Commission's rules is thus neither theoretical nor hypothetical. To the contrary, there is a genuine and immediate need for modification of the Commission's rules so that engineers can evaluate and implement technologically and economically efficient options in the near term. Accordingly, the Commission should rule on the Petition as soon as possible.

⁴ 47 C.F.R. § 22.901(d)(2).

CONCLUSION

The Petition provides ample basis for modification of the Commission's rule governing cellular radio transmissions in analog mode. Prompt modification of the rule will provide substantial benefits – enhanced aesthetics, increased opportunity for zoning approvals, improved service, and a more level competitive playing field – without causing concomitant harms. Moreover, the basis for the rule no longer remains valid. Simply put, the rule no longer makes regulatory sense and should be modified in accordance with the Commission's deregulatory mandate under the 1996 Act.

Respectfully submitted,

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